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C O N F I D E N T I A L SECTION 01 OF 03 SHANGHAI 000269

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E.O. 12958: DECL: 5/7/2017
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SUBJECT: DOD GENERAL COUNSEL'S RULE OF LAW MEETINGS

REF: SHANGHAI 111

CLASSIFIED BY: Mary Tarnowka, Section Chief, Political/Economic
Section , U.S. Consulate Shanghai.
REASON: 1.4 (b), (d)

11. (C) Summary: During DOD General Counsel William J. Haynes April 20-22 visit to Shanghai, he discussed rule of law issues with Shanghai Academy of Social Sciences (SASS) Institute of Law Academics, expatriate and Chinese legal experts at a Consul General-hosted dinner, and at the New York University/Jiaotong University Law Center where he participated in a roundtable with approximately thirty Jiaotong students and professors. SASS academics claimed that the government was committed to moving society towards a rule of law system, but that this process would take a long time. Legal experts said that there had been progress on rule of law issues and ordinary Chinese people were becoming more aware of their rights. Jiaotong University President Zhang Jie welcomed more rule of law cooperation with the United States. End Summary.

SASS Institute of Law

12. (SBU) On April 20, DOD GC Haynes participated in a roundtable with SASS Institute of Law faculty, chaired by SASS Vice President and prominent U.S.-China bilateral relations scholar Huang Renwei. According to SASS Institute of Law Deputy Director Lin Yinmao, the institute had conducted research on a wide-range of legal subjects including administrative law, criminal law, constitutional law and trade law. It had submitted some of its reports directly to the National People's Congress and Shanghai Municipal People's Congress and, therefore, acted as an advisory body to both the local and national governments.

13. (SBU) Lin said that its current research projects included topics such as judicial law enforcement, corporate crime, mechanisms to resolve WTO disputes and China's administrative litigation system. She noted government had been focused in recent years on issues that affected ordinary people such as housing problems and how to manage migrants. Lin said that the institute's future research emphasis would be on defining what role the government should and should not play in society. She acknowledged that society was changing and moving from a central to a market economy. Because of these changes, the government must adjust the way it managed society and limit its role.

14. (SBU) She added that China understood the importance of rule of law and that legal reform was connected to economic development. Many academics in China were trying to define the rule of law, which in Chinese had the same sound as rule by law. She said that China was gradually moving away from "rule by law", which was personality-based, to rule of law. However, this process took time and every country had different conditions. She emphasized, however, that the goal of establishing rule of law was there.

15. (SBU) Haynes noted that, in the United States, everyone, even the Department of Defense, had to obey the law and asked what mechanisms the Chinese government used to govern its officials. Lin agreed that all government officials must be accountable to the people and the government needed to compensate people whose rights had been violated. In China, there were several laws governing officials, specifically the Administrative Review Law, Administrative Litigation Law, and Supervision Law. She added that every government agency also had its own legal department which advised officials on the law. In addition, think-tanks such as SASS also played an indirect role in supervising officials. While SASS had no direct supervisory powers, it still "had a voice" and could write about

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issues and advise the government on legal issues.

Legal Experts Dinner

16. (C) At the Consul General-hosted dinner, Shanghai expatriate and Chinese legal experts briefed CG Haynes on the state of rule of law in China. The dinner guests said that there had been some rule of law progress in China. Jiaotong University Law School Deputy Dean Zhou Wei said that while one could not publicly advocate for democracy or an end to the one-party system, academics were free to discuss this issue among themselves and to publish articles about political reform in scholarly journals. He added that there had been some experiments that increased public participation and democracy in small towns. (Note: He did not provide specifics. End Note.) The government was moving cautiously because of concerns about stability. According to Zhou, people were feeling increasingly uneasy because the crime rate had increased throughout the country and there continued to be poverty in the countryside. Beijing was worried that political reforms could lead to instability and before implementing any new reforms wanted guarantees that reforms would be successful, which was impossible of course.

17. (C) Clifford Chance Partner Stephen Harder said that people in China were becoming increasingly aware of their legal rights. For example, there had been more and more stories of ordinary people sticking up for their rights. In addition, there were more avenues for people to express themselves. For example, many Chinese people were shareholders and understood that they had shareholders' rights. Another illustration, he said, was that ordinary Chinese people were learning about voting as they cast votes for contestants in the "Supergirl" TV program. He also noted that there were already in existence some structures that could support democracy. For example, the National People's Congress (NPC) voted on legislation. While the NPC currently acted as a rubber-stamp, one day the delegates might

become more independent and cast independent votes. Zhou agreed that ordinary people were becoming more aware of their rights. He noted that the government had recently reduced the fees paid by plaintiffs to file suits against the government. This would allow more people to file suits and press for their rights.

¶18. (C) Jiaotong Professor and Fulbright Scholar Dan Guttman attributed the increased awareness to the proliferation of magazines and newspapers in China. He said that these newspapers and magazines must all make a profit and had been more active in reporting on issues. In addition, Chinese people were traveling more and becoming exposed to how things worked in the West. Consulate FSN Rule of Law Coordinator noted that many people of her generation (early 30's) were able to get information about events and issues because they had access to the Internet.

¶19. (C) Harder noted China's increased activity in the international arena and said that China appeared to be courting countries in Africa, Asia and Latin America. Jiaotong Professor, Squire Sanders Counsel, and environmental lawyer Charles McElwee added that many complained that China was "on a race to the bottom". China was undermining international environmental efforts by ignoring these standards when it signed deals with these countries. Guttman noted that China had become a major player in the assistance arena. According to Guttman, the China Export Bank would soon overtake the World Bank in the amount of loans it distributed worldwide. He said the China Export Bank had provided USD 15 billion in loans, while the World Bank had provided USD 23 billion.

Jiaotong University Visit

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¶10. (SBU) During DOD GC Haynes' visit to the Jiaotong/NYU Joint Law Center, he was warmly greeted by Jiaotong University President Zhang Jie. Zhang noted that the Jiaotong's law school was relatively new. He welcomed more cooperation between the United States and Jiaotong University on rule of law issues. DOD GC Haynes also participated in a roundtable with approximately thirty Jiaotong students and professors. The students probed DOD GC Haynes on his position and the role of military lawyers in the United States. DOD GC Haynes stressed to the students that every government official, civilian or military, had made a vow to the constitution. No one was above the law and all officials were accountable for their actions. He also noted the importance of legal aid and encouraged the students to participate in legal aid or pro bono projects.

¶11. (C) Bio Note: Jiaotong President Zhang appeared to be very comfortable during his meeting with DOD GC Haynes. He spoke excellent English and was able to joke easily. Zhang is a Physicist and considered to be a leading academic in China. According to contacts at Jiaotong, he perfected his English during his eight-year stay in England as a visiting scholar. Zhang said that since becoming Jiaotong President five months ago, he has had no free time. He longed to return to his laboratory to continue his research on nuclear fusion.

¶12. (U) This message was cleared by DOD GC Haynes' staff.
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